

4. Therefore, Defendant's removal is timely filed within 30 days of actual receipt by Peleus of the initial pleading filed in this matter. 28 U.S.C. § 1446(b)(2)(B).

II. BASIS FOR REMOVAL

5. Venue is proper in this District under 28 U.S.C. § 1441(a) because the state court where the action is pending is located in this District and this division.

6. Removal is proper under 28 U.S.C. § 1332(a) if there is complete diversity between the parties and the amount in controversy exceeds \$75,000, exclusive of interest, costs and attorneys' fees. These two conditions are satisfied in this matter.

A. Removal is Proper Because Complete Diversity of Citizenship Exists Between Plaintiff and Peleus.

7. Plaintiff Shea Renaissance, LLC is a Delaware corporation, with a principal office in California.² Plaintiff is thus a citizen of Delaware and California for diversity jurisdiction purposes.

8. Defendant Peleus Insurance Company is an eligible surplus lines insurance company organized under the laws of the Commonwealth of Virginia, with a principal office in Richmond, Virginia. Peleus is thus a citizen of Virginia for diversity jurisdiction purposes.

(1) Defendant's removal is timely as it is filed within 30 days of service.

9. Plaintiff served Peleus through the Texas Commissioner of Insurance as authorized by the Texas Insurance Code.³ The Commissioner of Insurance received Plaintiff's Original Petition on September 6, 2017. Texas Insurance Code § 804.203 instructs the

² See Plaintiff's Original Petition at ¶2.

³ See TEX. INS. CODE §804.102(c) ("If a domestic company does not appoint or maintain a person in this state as agent for service of process or the agent cannot with reasonable diligence be found, the commissioner may accept service of process and notify the company...").

Commissioner to “immediately” send the process served to the defendant.⁴ However, the Commissioner of Insurance mailed Plaintiff’s Original Petition two weeks later and Peleus did not receive it until September 25, 2017.⁵ Case law has long been clear that, “When service is effected on a statutory agent, the removal period begins when the defendant actually receives the process, not when the statutory agent receives process.”⁶ Therefore, because Peleus files this Notice of Removal within thirty days of actual receipt of the process, it is timely filed.

B. Removal is Proper Because Plaintiff’s Claimed Damages Exceed This Court’s Jurisdictional Threshold of \$75,000.

10. Plaintiff’s Original Petition shows that the amount in controversy is far greater than \$75,000.⁷ Therefore, the jurisdictional threshold of \$75,000 is met and removal is proper.

III. CONCLUSION

11. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of this Notice will be filed with the clerk of the District Clerk of Tarrant County, Texas promptly after the filing of this Notice.

⁴ See TEX. INS. CODE §804.203 (“The commissioner shall immediately send by registered or certified mail, return receipt requested, one copy of process served on the commissioner...”).

⁵ See Exhibit C-3 (Certification from Texas Department of Insurance showing delivery date to Peleus was September 25, 2017); see also Exhibit 1-A (United States Postal Service Tracking Results showing delivery/pick up on September 25, 2017).

⁶ See, e.g., *Monterey Mushrooms, Inc. v. Hall*, 14 F.Supp.2d 988, 991 (S.D. Tex. 1998) (citing 14A Charles Alan Wright, et al., *Federal Practice and Procedure* § 3732, at 516 (2d ed. 1985), and further noting “Texas provisions for service of statutory agents do not constitute ‘receipt by the defendant’ for purposes of beginning the thirty-day removal period.”) (citing *Kurtz v. Harris*, 245 F.Supp. 752, 754 (S.D. Tex. 1965)); see also, *Tucci v. Hartford Fin. Servs. Group, Inc.*, 600 F.Supp.2d 630, 633 (D.N.J. 2009) (noting, “the Commissioner is only a ‘conduit to ensure that service is made upon the defendant...Most significantly, the Commissioner had no power to remove this case on behalf of Defendants.”) (internal citation omitted).

⁷ See Plaintiff’s Original Petition at ¶4 (“Plaintiff seeks monetary relief over One Million Dollars (\$1,000,000)...”); ¶22 (“Shea’s damages, which include amounts already incurred and paid without reimbursement and amounts for repairs yet to be completed, are estimated to exceed \$3 million.”).

12. As required by 28 U.S.C. § 1446(a), and Local Rule 81.1, a copy of each of the following are attached to (or filed with) this Notice:

- a. An index of all documents that clearly identifies each document and indicates the date the document was filed in state court;
- b. A copy of the docket sheet in the state court action;
- c. each document filed in the state court action, except discovery material;
- d. a separately signed certificate of interested persons that complies with LR 3.1(c) or 3.2(e).

13. Pursuant to 28 U.S.C. § 1446(d), written notice of filing of this Notice will be given to all adverse parties promptly after the filing of this Notice.

WHEREFORE, Defendant Peleus Insurance Company requests that this action be removed from the 236th Judicial District Court of Tarrant County, Texas, to the United States District Court for the Northern District of Texas, Fort Worth Division, and that this Court enter such further orders as may be necessary and appropriate.

Respectfully submitted,

WINSTEAD PC

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CERTIFICATE OF SERVICE

I hereby certify that in compliance with Rule 5 of the Federal Rules of Civil Procedure, a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system on October 25th, 2017. Notice of this filing will be sent to opposing counsel, by operation for the Court's electronic filing system and CM-RRR:

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Via Electronic Service and Certified Mail

By: /s/ Stephen R. Wedemeyer

Stephen R. Wedemeyer

APPENDIX

Tab

Exhibits

Exhibit 1 - Affidavit of Amparo Yanez Guerra.....	1
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Exhibit A – Index of Documents Filed With Notice of Removal	A
Exhibit B – State Court Docket Sheet	B
Exhibit C – Index of Documents Filed in State Court.....	C
Exhibit C-1 – Plaintiff’s Original Petition.....	C-1
Exhibit C-2 – Return of Service of Citation on Peleus Insurance Company.....	C-2
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Exhibit C-4 – Return of Service of Citation on Peleus Insurance Company (3 rd copy)	C-4
Exhibit C-5 – Return of Service by Texas Department of Insurance	C-5
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